

### **REMARKS/ARGUMENTS**

Claims 1-32 are pending in the present application. Claims 1-19 have been rejected. Claims 20-32 have been withdrawn.

By this paper claim 18 has been amended and claim 19 has been cancelled.

Applicants respectfully respond to this Office Action.

#### **A. Claims 18-19 Rejected under 35 U.S.C. § 101**

The Office Action rejected claims 18-19 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. Claim 19 has been cancelled. Claim 18 is directed towards a “computer-readable medium containing instructions.” Claim 18, preamble. Thus, claim 18 is directed towards a computer-readable medium. As a result, it is directed towards statutory subject matter. Applicants respectfully request that the Examiner withdraw this rejection.

#### **B. Double Patenting Rejection of Claims 1-19 – Provisional Rejection**

The Office Action rejected claims 1-19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending U.S. Patent Application No. 10/027,714. This rejection was a provisional rejection.

Applicant reminds the Examiner regarding the procedures set forth in M.P.E.P. § 1490 regarding double patenting rejections of two copending applications. For example, the M.P.E.P. states that “[i]f the [obviousness-type double patenting] rejection is the only rejection remaining in the earlier filed of the two pending applications, (but the later filed application is rejectable on other grounds), the examiner should then withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.” M.P.E.P. § 1490. The present application is the parent, or earlier filed application, and therefore if this application were to become allowable before the rejected copending application, the Examiner is requested to permit this application to issue without the terminal disclaimer.

C. Claims 1-19 Rejected under 35 U.S.C. § 102

The Office Action rejected claims 1-19 under 35 U.S.C. § 102(e) as being anticipated by Coffey et al., U.S. Publication No. 2003/0040889 A1 (hereinafter, "Coffey"). This rejection is respectfully traversed.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (July 1998) (citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). "The identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131 (July 1998) (citing Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). In addition, "the reference must be enabling and describe the applicant's claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention." In re Paulsen, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Claim 1 recites "accessing instructions that access observer data", and "observer data that includes data descriptive of an observer program." Coffey does not disclose these claim elements. Coffey is a "system for monitoring computer use and, more particularly, a system for collecting, logging, and analyzing preselected operations in a personal computer and reporting use trends." Coffey, Para. [0002]. Indeed, the title of Coffey is a "computer use meter and analyzer." Id., Title. From a reading of Coffey it appears that Coffey is a kind of system for monitoring computer use. The Examiner may assert that Coffey is a type of observer program itself, mentioned by Applicants in Applicants' patent specification. However Coffey does not disclose all of the elements of the claimed invention and, at most, merely discloses a type of observer program.

Coffey includes many statements which would indicate it is merely a system for monitoring computer use. "It is an object of the invention to facilitate the collection of reliable information regarding the use of personal computer software." Id., Para. [0006]. "It is a further object of the invention to facilitate the collection of reliable multi-media viewing statistics of commercial on-line services as well as access to the 'information superhighway,' including the use of the Internet's World Wide Web." Id., Para. [0007]. Coffey further states the following:

Advantageously, the system according to the invention may be utilized in association with a plurality of computers and computer users. The computers and computer users associated with the system may be intended to be representative of a much larger universe of users. *This is analogous to collection of television viewing information used to establish television ratings based on a limited number of households.* The limited number of households is considered representative of the overall computer use or “viewing.”

Id., Para. [0011] (emphasis added). Thus, Coffey does not disclose “accessing instructions that access observer data”, and “observer data that includes data descriptive of an observer program.”

Claim 1 also recites “comparing instructions that compare the observer data with memory data read in from memory to determine whether the observer program is present on the computer system.” Coffey does not disclose this claim element. Paragraph [0036] of Coffey states that “the main operating module 23 of the computer use meter is identified as RITA and operates within its own window.” Id., Para. [0036]. Further, it states that the “RITA module 23 monitors these messages for commands invoking the RITA application main window 23.” Id. However, this does not disclose “comparing instructions that compare the observer data with memory data read in from memory to determine whether the observer program is present on the computer system.”

Claim 1 further recites “outputting instructions that obtain the results and provide the results for a user.” Claim 1 also states “wherein the results generated indicate whether the observer program is present on the computer system.” Coffey does not disclose this claim element. Paragraph [0036] of Coffey states that the “RITA INI file subsystem will communicate with a panelist information dialogue box 26 for the purposes of panelist name collection.” Id. This “panelist information dialogue box 26 will also transmit an active user name to the RITA main window 23.” Id. “The active user name is utilized in connection with the logging operation.” Id. However, this does not disclose “outputting instructions that obtain the results and provide the results for a user,” where “the results generated indicate whether the observer program is present on the computer system.”

As set forth above, Coffey does not disclose every element of claim 1. Claims 2-15 depend directly or indirectly from claim 1. Thus, Applicants respectfully request that the rejection of claims 2-15 be withdrawn for at least the same reasons.

Claim 16 recites “means for accessing the observer data,” and “observer data that includes data descriptive of an observer program.” Coffey does not disclose these claim elements. Coffey is a “system for monitoring computer use and, more particularly, a system for collecting, logging, and analyzing preselected operations in a personal computer and reporting use trends.” Id., Para. [0002]. Indeed, the title of Coffey is a “computer use meter and analyzer.” Id., Title. From a reading of Coffey it appears that Coffey is a kind of system for monitoring computer use. The Examiner may assert that Coffey is a type of observer program itself mentioned by Applicants in Applicants’ patent specification. However Coffey does not disclose all of the elements of the claimed invention and, at most, merely discloses a type of observer program.

Coffey includes many statements which would indicate it is merely a system for monitoring computer use. “It is an object of the invention to facilitate the collection of reliable information regarding the use of personal computer software.” Id., Para. [0006]. “It is a further object of the invention to facilitate the collection of reliable multi-media viewing statistics of commercial on-line services as well as access to the ‘information superhighway,’ including the use of the Internet’s World Wide Web.” Id., Para. [0007].

Claim 16 also recites “means for comparing the observer data with memory data to determine whether the observer program is present on the computer system.” Coffey does not disclose this claim element. Paragraph [0036] of Coffey states that “the main operating module 23 of the computer use meter is identified as RITA and operates within its own window.” Id., Para. [0036]. Further, it states that the “RITA module 23 monitors these messages for commands invoking the RITA application main window 23.” Id. However, this does not disclose “means for comparing the observer data with memory data to determine whether the observer program is present on the computer system.”

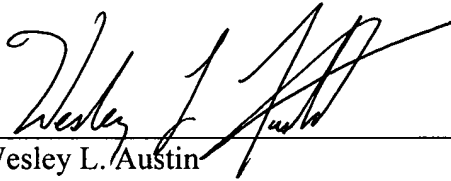
Claim 16 further recites “means for outputting the results for a user.” Claim 16 also states “wherein the results generated indicate whether the observer program is present on the computer system.” Coffey does not disclose this claim element. Paragraph [0036] of Coffey states that the “RITA INI file subsystem will communicate with a panelist information dialogue box 26 for the purposes of panelist name collection.” Id. This “panelist information dialogue

box 26 will also transmit an active user name to the RITA main window 23.” Id. “The active user name is utilized in connection with the logging operation.” Id. However, this does not disclose this claim element.

As set forth above, Coffey does not disclose every element of claim 1. Claims 17-18 include similar elements as identified above in the arguments with respect to claim 1. Thus, Applicants respectfully request that the rejection of claims 17-18 be withdrawn for at least the same reasons.

Applicants respectfully assert that claims 1-18 are patentably distinct from the cited references, and requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

  
\_\_\_\_\_  
Wesley L. Austin  
Reg. No. 42,273  
Attorney for Applicant(s)

Date: November 22, 2006

Wesley L. Austin, Esq.  
Trapware Corporation  
1244 E. 1650 S.  
Bountiful, UT 84010  
Telephone: (801) 296-0597